



FREDERICK COUNTY PLANNING COMMISSION

September 8, 2021

TITLE: **Crestwood Manor**

FILE NUMBER: **S-1171 AP PL264042, A264016, F264020, F264021**

REQUEST: **Combined Preliminary/Final Plat Approval**
The Applicant is requesting Combined Preliminary/Final Plat approval to subdivide a 9.52-acre Site into 2 lots.

PROJECT INFORMATION:

ADDRESS/LOCATION: 5614 New Design Road, located approximately 450 ft. south of the intersection of New Design Road and Crestwood Boulevard

MAP/PARCEL: Tax Map 77, Parcel 30

COMP. PLAN: High Density Residential

ZONING: R-16 – High Density Residential

PLANNING REGION: Frederick

WATER/SEWER: W-1/S-1

APPLICANT/REPRESENTATIVES:

APPLICANT: OSPREY Property Company II LLC

OWNER: MANCHESTER PARTNERS LLC

ENGINEER: Dewberry Engineers

STAFF: Ashley M. Moore, Principal Planner

RECOMMENDATION: **Conditional Approval**

Enclosures:

Exhibit #1 – Combined Preliminary/Final Plat Rendering

Exhibit #2 – APFO Letter of Understanding

Exhibit #3 – FRO Plan and Modification Letter

STAFF REPORT

ISSUE

Development Request

The Applicant is requesting Combined Preliminary/Final Plat approval to subdivide a 9.52-acre property into two separate lots. The application is being reviewed under Chapter 1-16 of the County Code (Subdivision Regulations).

BACKGROUND

Development History

The 9.52-acre property was originally zoned Agricultural. In 1989 the property was rezoned to R-16 High Density Residential through case R-88-50 and adopted through ordinance #89-39-570. The Board of County Commissioners (BOCC) approved the rezoning with the following conditions:

1. A maximum of 144 dwelling units may be constructed on this property.
2. The maximum floor area for new construction on this site (excluding the house and out-buildings existing on the date of the enactment of this Ordinance) shall be 100,000 square feet.
3. In accordance with the site development plan submitted by the applicant with this application in this case, no more than 25% of the property shall be covered in buildings, parking area or access roads. The remaining area will be in green area or outdoor recreation areas.

In 2014, a request was submitted to the County for a rezoning condition amendment (Case # R-88-50 (A)) to eliminate conditions #2 and #3 as listed in Ordinance 89-39-570. On May 28, 2014, the Frederick County Planning Commission voted to recommend approval of the request and on June 17, 2014, the BOCC voted to approve the revised Ordinance 89-39-570. The revised ordinance maintained condition #1, deleted conditions #2 and #3 and added the following condition:

2. The existing farmhouse/residence and smokehouse on the property shall be preserved.

Therefore, two conditions are connected to any future site development plan in regards to the maximum total of units and the preservation of the existing farmhouse/residence and smokehouse. The project is also subject to a Development Rights and Responsibilities Agreement dated October 9, 2014 and recorded in Liber 10241 Folio 427.

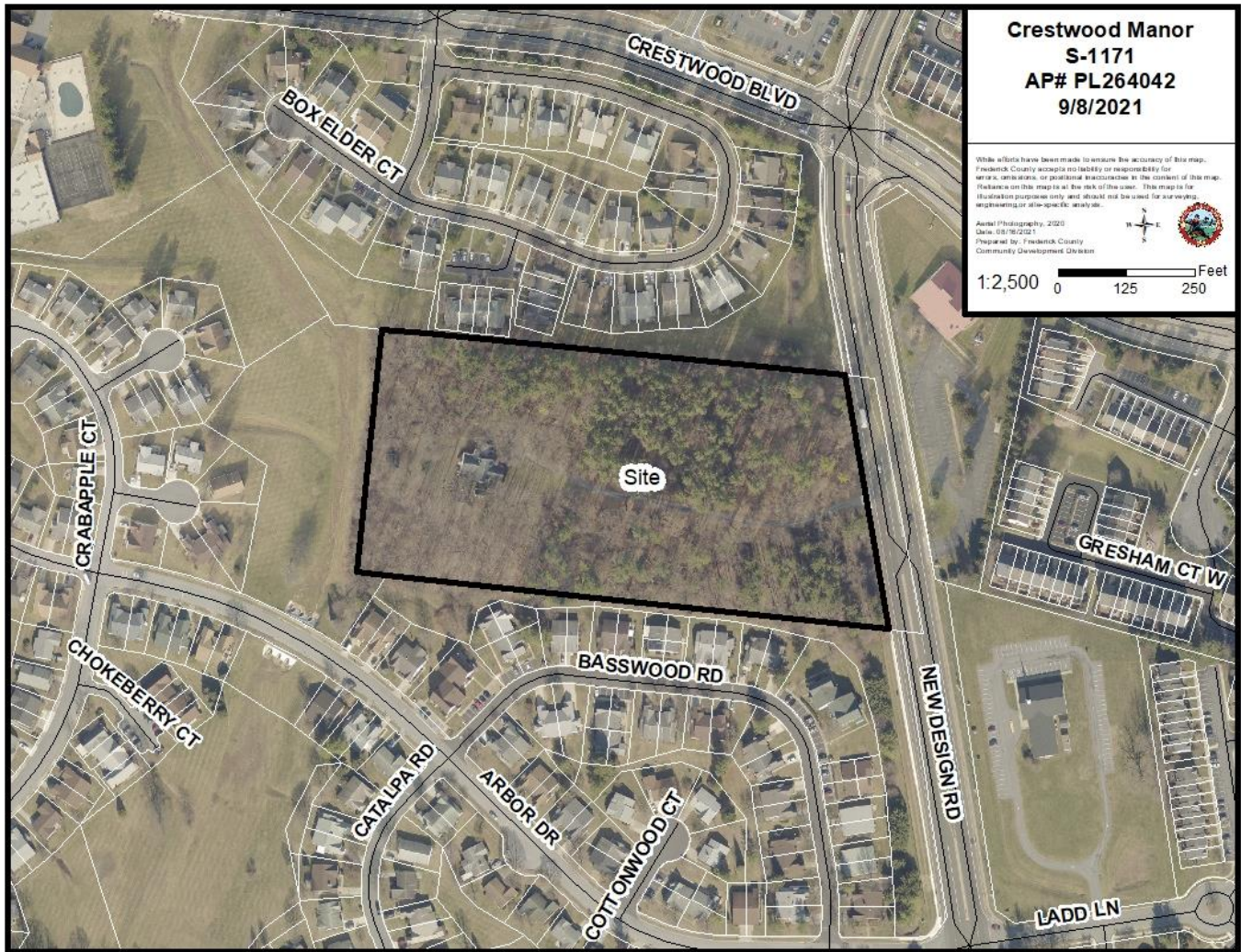
Existing Site Characteristics

The property is covered in vegetation with the existing house situated at the rear of the Site. In addition to the house, there is an existing garage and smoke house. There is a single access from New Design Road. The driveway loops around the existing carport. See Graphic #1 & 2.

Graphic #1



Graphic #2: Aerial



ANALYSIS

A. ZONING ORDINANCE REQUIREMENTS

1. District Regulations, Design Requirements for Specific Districts §1-19-6.100:

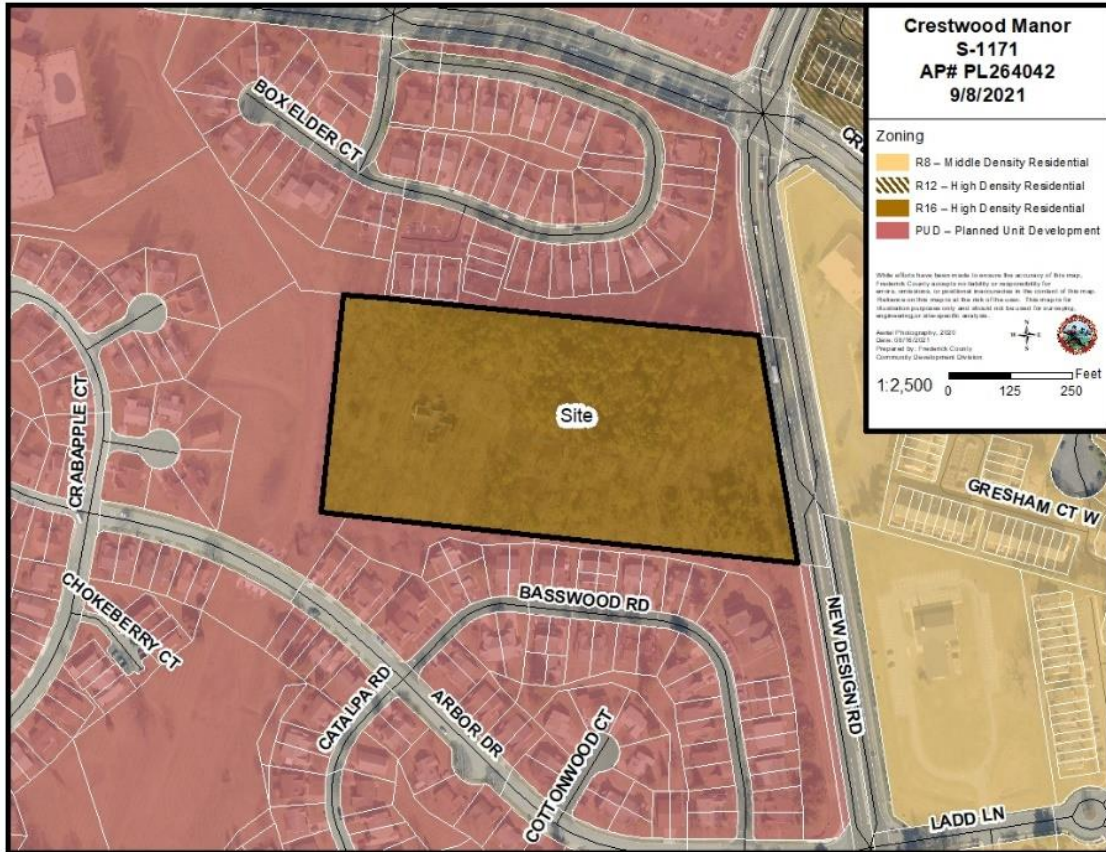
High Density Residential R-16: 40 ft. front yard, side and rear yards are equal to the height of the building. The maximum height is 100 ft. There is no minimum lot area and the minimum lot size is 2,700 sq. ft. per unit. The Applicant is providing 2,828.5 sq. ft. per unit for lot 1 and 4,035.85 sq. ft. per unit for lot 2.

The proposed lots meet the minimum lot size requirement (Lot 1 is 169,710 sq. ft. and Lot 2 is 242,151 sq. ft.). The required front, rear, and side setbacks are shown and noted on the plan and meet the Zoning Ordinance requirements.

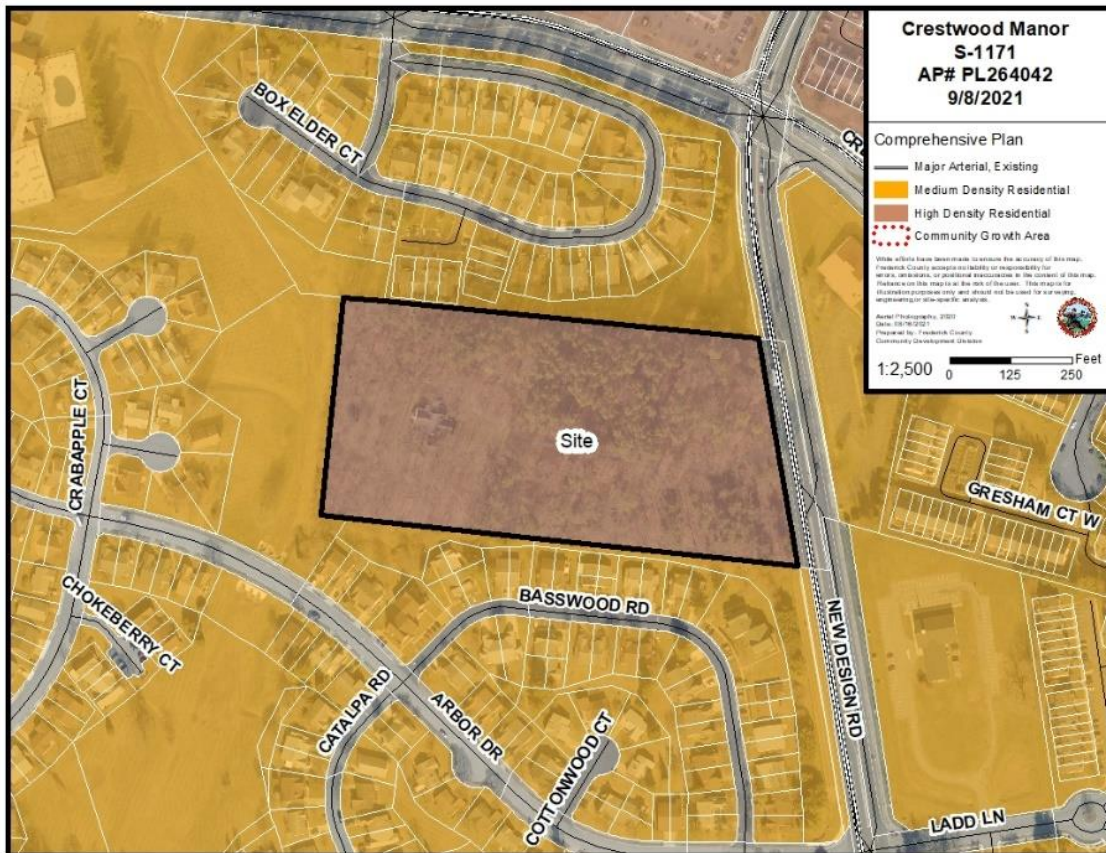
Zoning Ordinance Requirements Findings/Conclusions

The proposed subdivision will meet all Zoning Ordinance requirements.

Graphic #3: Zoning



Graphic #4: Comprehensive Plan



B. SUBDIVISION REGULATION REQUIREMENTS

1. Land Requirements §1-16-217(A): *The land use pattern of the Comprehensive Plan and the district regulations of the zoning ordinance shall form the basic theme of the design pattern of the proposed subdivision.*

The property is zoned High Density Residential (R-16). The proposed lots are adjacent to Crestwood Village (a 1,025 unit development) which has a county comprehensive plan land use designation of medium density residential. The proposed land use and subdivision design complies with the Comprehensive Plan and will meet the district regulations of the Zoning Ordinance.

2. Land Requirements §1-16-217(B): *The subdivision design shall take advantage of the uniqueness of the site reflected by topography, soils, the wooded areas, water bodies and the relationship to adjoining subdivisions and land uses, both proposed and existing.*

The proposed lots design takes advantage of the topography, adjoining subdivisions, and land uses. The area of the proposed subdivision does not contain any water bodies (the setback falls slightly on the property). However, there are flooding soils at the rear of the Site. The property is completely wooded and the lots are subdivided in a way that most of the woods are proposed to be cleared for future development. The lots are situated in between medium density residential to the north, south, and west. The property lines accommodate and are configured around the existing historic house.

3. Preliminary Plan, Required Information §1-16-72 (B)(18)(a-e): *In cases of condominium or multi-family projects (apartment, townhouse, and the like), the following additional items shall be shown: (a) Approximate location of each building, setbacks from all streets (public or private), property lines and distance between buildings; (b) Number and types of units in each building; (c) Total number of units and subtotals of each type and square feet of each; (d) Number of parking spaces in each off-street parking area and total thereof; (e) Interior road or street access, whether public or private and total area of each.*

The lots show the approximate locations of the proposed buildings, setbacks, property lines, and distances between each building. There will be a total of 120 units: a mixture of 1-3 bedroom units. A common driveway will be shared common access for both lots will be provided and constructed as part of the site plan. The proposed common driveway is shown as the reciprocal access easement on the plat. These improvements are for illustrative purposes. Approval of the development of these lots must be reviewed and approved through the site plan process.

4. Preliminary Plan, Required Information §1-16-72 (B)(19)(a & b): *Soil types: (a) Soils type(s) information shall be provided and appropriate boundaries shown on the plan. In the event that "wet soils" are located on or within 100 feet of a proposed residential structure, a soils delineation report shall be prepared by a licensed soil scientist or professional engineer registered in the State of Maryland. The soils delineation report shall be submitted for review prior to Planning Commission approval of the plan. The Division may waive this requirement if the "wet soils" are located within open space areas.*

Soil information and boundaries are provided on the plan. There are wet and flooding soils (AfB) located in the rear area of proposed subdivision. This area is designated as open space as part of the site plan. The residential structures will not be constructed on or within 100 feet of the wet soils or within the required 25' flooding soils setback.

5. Road Access Requirements. Public Facilities §1-16-12(B)(3)(b): *For major subdivisions; Lots must access a publicly-maintained road with a continuously paved surface that is at least 20 feet in width.*

Both lots have frontage along New Design Road, which meets the minimum 20 ft. wide travel way width requirement. As stated before, a shared common driveway is proposed therefore a shared access easement is required to be recorded prior to plat recordation.

Condition: Record shared access easements and note recordation information on the plat prior to final plat approval.

6. Water and Sewer Facilities. Public Facilities §1-16-12 (C): *The proposed subdivision shall be disapproved unless each building lot has been approved for individual and/or community sewerage and water facilities by the Health Department.*

The lots will be served by public water and sewer. The Division of Sewer and Water Utilities will approve the plat pending the water and sewer easement recordation and until facilities are completed in time to serve the subdivision. The easements must be recorded and referenced on the plat prior to lot recordation.

Condition: Record water and sewer easements and note recordation information on the plat prior to final plat approval.

Subdivision Regulation Requirements Findings/Conclusions

The project will meet all Subdivision Regulation requirements once all agency comments and conditions are complied with.

B. OTHER APPLICABLE REGULATIONS

Stormwater Management – Chapter 1-15.2: Stormwater management will be provided in accordance with the Maryland SWM Act of 2007.

APFO – Chapter 1-20:

Roads: This development is projected to generate 43am and 53 pm weekday peak hour trips and was therefore required to be tested for APFO per Section 1-20-30. A traffic impact analysis (TIA) was submitted by The Traffic Group, dated March 29, 2021 (revised May 21, 2021), for review and approval based on APFO Section 1-20-31. The results of the TIA indicate that all study intersections, including the site access, are operating at acceptable levels of service (LOS) and will continue to operate with an acceptable LOS during each of the peak periods using CLV and HCM methodology. As part of the site development a deceleration lane will be constructed along the property frontage of New Design Road to facilitate safe site access, along with accommodations for a future on-street bicycle lane. In accordance with §1-20-12(H) of the APFO, the applicant is required to pay its proportionate contribution to existing road escrow accounts equaling \$179,629 as documented in the attached Letter of Understanding.

Schools: The Project is projected to generate 16 elementary school students, 6 middle school students and 10 high school students. The APFO schools test found the current year enrollment capacity to be 95% at the elementary school level (Ballenger Creek ES), 78% at the middle school level (Crestwood MS), and 93% at the high school level (Tuscarora HS). Enrollment for the 2022-2023 year project capacity to be 92% at the elementary school level, 90% at the middle school level, and 98% for the high school level. Based on these numbers and considering enrollment projections from pipeline development, the school adequacy test meets the standards of adequacy at all 3 levels.

Water and Sewer: The Property has water and sewer classifications of W-1 and S-1. While the public sewer and water facilities are currently adequate to serve the Project, the Applicant is

aware that capacity is not guaranteed until purchased. APFO approval for sewer and water does not guarantee that plats will be recorded and building permits issued. Plat recordation and building permit issuance is subject to compliance with the Annotated Code of Maryland, Environment Article Section 9-512, et seq. and all applicable County regulations, including but not limited to Sec. 1-16-106 of the Frederick County Subdivision Regulations.

Period of Validity: The APFO approval is valid for two (2) years from the date of Planning Commission approval; therefore, the approval expires on September 8, 2023.

Forest Resource – Chapter 1-21: The Applicant has submitted a Combined Preliminary/Final Forest Conservation Plan. The plan set outlines the forest conservation mitigation requirements for the 9.52-acre property. The property contains 7.45 acres of existing forest. The Applicant proposes to clear 7.05 acres of forest and place the remaining 0.40 acres of forest into a FRO easement. The Applicant also proposes to plant an additional 0.33 acres in a small pocket directly adjacent to the two (2) small existing forest areas to be retained. Total mitigation provided is 7.45 acres, comprised of 0.40 acres of forest retention, 0.33 acres of forest planting, 0.04 acres of tree save credits, and by the transfer of 6.68 acres of forest banking credits.

The site contains six (6) specimen trees (trees 30" or greater in diameter). The Applicant is proposing to remove five (5) specimen trees. The remaining one (1) specimen tree will be retained and protected. Per §1-21-40 of the FRO, nonhazardous specimen trees must be retained unless reasonable efforts have been made to protect them, the plan cannot reasonably be altered, and the FCPC finds that that the requirements for granting a modification have been met. Hazardous trees may be removed without a FCPC modification. Of the five (5) specimen trees to be removed, four (4) trees exhibit structural defects and significant health issues that make them predisposed to failure. These trees are also located in close proximity to existing driveways, structures, and other potential targets. Their removal is approved by staff.

One (1) tree is considered non-hazardous by staff. As such, this tree will require Planning Commission approval to remove. The Applicant is seeking a modification of the Forest Resource Ordinance (FRO) to permit the removal of the following specimen tree under the provisions of §§1-21-21 and 1-21-40:

Tree ID #	Size and Species	Location	Condition
4	34" Silver Maple	Along northern property line in central portion of property	Fair

The Applicant's FRO Modification Request (Exhibit #3) discusses the tree's condition and why its removal is proposed. Based on the proposed plan, the tree's critical root zone is situated within an area to be graded for parking. Shifting the parking to save the tree would result in a negative cascading effect on the proposed building layout, parking areas, vehicular circulation, and overall viability of the project.

Per §1-21-40 of the FRO, nonhazardous specimen trees must be retained unless reasonable efforts have been made to protect them, the plan cannot reasonably be altered, and the FCPC finds that that the requirements for granting a modification have been met.

§ 1-21-21. MODIFICATIONS.

(A) Modification requests. A person may submit a request to the Frederick County Planning Commission (FCPC) for a modification from this chapter or the requirements of Md. Code Ann., Natural Resources Article, §§ 5-1601 through 5-1612, if the person demonstrates that enforcement would result in unwarranted hardship to the person.

(B) Required information. An applicant for a modification shall:

(1) Describe the special conditions peculiar to the property that would cause the unwarranted

hardship;

(2) Describe how enforcement of these rules will deprive the landowner of rights commonly enjoyed by others in similar areas;

(3) Verify that the granting of the modification will not confer on the landowner a special privilege that would be denied to other applicants;

(4) Verify that the modification request is not based on conditions or circumstances that are the result of actions by the applicant;

(5) Verify that the request does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property; and

(6) Verify that the granting of a modification will not adversely affect water quality.

(C) Modification approval. The FCPC must make a finding that the applicant has met the requirements in subsection (B) of this section and that enforcement would cause the applicant unwarranted hardship before the FCPC may approve any modification. [Emphasis added.]

In order for the FCPC to grant a modification to allow the removal of specimen trees, the FCPC must find:

- that reasonable efforts have been made to protect the specimen trees and that the plan cannot reasonably be altered (in accordance with § 1-21-40 (B)(1), and;
- that the Applicant meets the six criteria outlined under §1-21-21 (B) (a detailed discussion of the six criteria is provided in the Applicant's modification request)

Condition: The Preliminary/Final FRO plan must be approved prior to plat recordation. FRO mitigation must be provided prior to plat recordation, prior to applying for grading permits or building permits, whichever is applied for first.

Historic Preservation – Chapter 1-23: The Site contains a large stuccoed stone and brick house. The Maryland Historical Trust Review Form states that the Manchester property is not eligible for the National Register of Historic Places. However, the property is associated with Margaret Scholl Hood, a locally prominent figure. The existing residence and smokehouse will remain as a community amenity building for the proposed multifamily dwelling development, thereby meeting the condition of rezoning. Historic Preservation staff have reviewed and approved this application.

Summary of Agency Comments

Other Agency or Ordinance Requirements	Comment
Public Works Development Review	Approved
Development Review Planning	Resubmit – Approval pending DWSU and EH review status.
Development Review Transportation Engineering	Approved
Forest Conservation (FRO)	Approved
Adequate Public Facilities (APFO)	Approved
Street Name Review	Approved
Division of Water and Sewer Utilities (DWSU)	Resubmit – Approval pending water & sewer easement recordation.
Board of Education	Approved
Health Department	Resubmit – Pending DWSU approval.
Historic Preservation	Approved

RECOMMENDATION

Staff has no objection to conditional approval of the Crestwood Manor Combined Preliminary/Final Plat. If the Planning Commission approves the plat, it is valid for a period of five (5) years from the date of Planning Commission approval (September 8, 2026) or the period of the APFO approval, whichever is less. The APFO is valid for a period of 2 years and expires on September 8, 2023. Therefore, the plat expires September 8, 2023 unless recorded before this date.

Based upon the findings and conclusions as presented in the staff report, the application meets or will meet all applicable subdivision, zoning, APFO, and FRO requirements.

Staff-proposed conditions of approval:

1. The Applicant shall comply with all Staff and agency comments through the completion of the plan.
2. FRO mitigation must be provided prior to plat recordation.
3. Record water and sewer easements and shared access easements and note recordation information on the plat prior to final plat approval.

PLANNING COMMISSION ACTION

MOTION TO APPROVE

I move that the Planning Commission **APPROVE** Combined Preliminary/Final Plat S-1171, AP PL264042 (A264016, F264020, and F264021), **including APFO and FRO**, based on the findings and conclusions of the staff report and the testimony, exhibits, and documentary evidence produced at the public meeting.

NEW DESIGN ROAD

MAJOR ARTERIAL ROAD
SEE FREDERICK CO. DPW
PLAT NO. 300 AND L. 2285 F. 500
RW WIDTH VARIED

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FREDERICK COUNTY GOVERNMENT

DIVISION OF COMMUNITY DEVELOPMENT

Department of Planning & Development Review

Jan H. Gardner
County Executive

Steve Horn, *Division Director*

Mike Wilkens, *Director*

ADEQUATE PUBLIC FACILITIES LETTER OF UNDERSTANDING

Crestwood Manor

PL264042, F264020, A264016

In General: The following Letter of Understanding ("**Letter**") between the Frederick County Planning Commission ("**Commission**") and Osprey Property Company II LLC. ("**Developer**"), together with its/their successors and assigns, sets forth the conditions and terms which the Commission deems to be the minimum necessary improvements dealing with school, water, sewer, and road improvements that must be in place for the property identified below to be developed, as proposed under the approved Crestwood Manor Site Development Plan (the "**Project**"), in compliance with the Frederick County Adequate Public Facilities Ordinance ("**APFO**").

The Developer, its successors and assigns, hereby agrees and understands that unless the required improvements (or contributions to road escrow accounts, as specified below) are provided in accordance with this Letter, APFO requirements will not be satisfied and development will not be permitted to proceed.

This Letter concerns itself with the Developer's 9.52 +/- acre parcel of land, which is zoned R-16, and located on the east side of New Design Road, south of Crestwood Boulevard. This APFO approval will be effective for the subdivision of the parcel into two lots and the development consisting of 120 multi-family units (three stories), shown on the site plan (SP264018), which was conditionally approved by the Commission on September 8, 2021.

Schools: The Project is projected to generate 16 elementary school students, 6 middle school students and 10 high school students. Based on these numbers and considering enrollment projections from pipeline development, the school adequacy test meets the standards of adequacy at all 3 levels.

Water and Sewer: The Property has water and sewer classifications of W-1 and S-1. While the public sewer and water facilities are currently adequate to serve the Project, the Applicant is aware that capacity is not guaranteed until purchased. APFO approval for sewer and water does not guarantee that plats will be recorded and building permits issued. Plat recordation and building permit issuance is subject to compliance with the Annotated Code of Maryland, Environment Article Section 9-512, et seq. and all applicable County regulations, including but not limited to Sec. 1-16-106 of the Frederick County Subdivision Regulations.

Road Improvements: This project generates 43 am and 53 pm weekday peak hour driveway trips and was therefore required to be tested for APFO per Section 1-20-30. A Traffic Impact Analysis dated March 2021, and revised May 2021, was submitted for review and approval based on the requirements of Section 1-20-31. All intersections within the study area were found to be

acceptable, thus no mitigation is required. A deceleration lane will be installed along the parcel frontage to ensure safe site access as part of the site development process.

In accordance with Section 1-20-12(H) of the APFO, the Developer is required to pay its proportionate contribution toward the following existing road escrow accounts in the project area:

1. Ballenger Creek Pike / Crestwood Boulevard: The applicant shall contribute the appropriate pro-rata share to Existing Escrow Account No. 3344 for a shared southbound through/right turn lane. The estimated cost of the improvement is \$242,811. As determined by Traffic Engineering Staff, the Developer's proportionate share of this Road Improvement is 8.96%. Therefore the Developer hereby agrees to pay \$21,744 to the escrow account for this Road Improvement.
2. Crestwood Boulevard / MD 351: The applicant shall contribute the appropriate pro-rata share to Existing Escrow Account No. 3345 for a northbound right turn lane. The estimated cost of the improvement is \$165,000. As determined by Traffic Engineering Staff, the Developer's proportionate share of this Road Improvement is 8.96%. Therefore the Developer hereby agrees to pay \$14,776 to the escrow account for this Road Improvement.
3. Crestwood Boulevard / MD 351 Intersection: The applicant shall contribute the appropriate pro-rata share to Existing Escrow Account No. 3763 for an additional southbound left turn lane. The estimated cost of the improvement is \$278,897. As determined by Traffic Engineering Staff, the Developer's proportionate share of this Road Improvement is 8.96%. Therefore the Developer hereby agrees to pay \$24,976 to the escrow account for this Road Improvement.
4. New Design Road / Crestwood Boulevard Intersection: The applicant shall contribute the appropriate pro-rata share to Existing Escrow Account No. 3306 for the construction of a new southbound right turn lane. The estimated cost of the improvement is \$290,092. As determined by Traffic Engineering Staff, the Developer's proportionate share of this Road Improvement is 5.15%. Therefore the Developer hereby agrees to pay \$14,940 to the escrow account for this Road Improvement.
5. New Design Road / Crestwood Boulevard Intersection: The applicant shall contribute the appropriate pro-rata share to Existing Escrow Account No. 3307 for the construction of a new traffic signal at the intersection. The estimated cost of the improvement is \$247,153. As determined by Traffic Engineering Staff, the Developer's proportionate share of this Road Improvement is 5.15%. Therefore the Developer hereby agrees to pay \$12,728 to the escrow account for this Road Improvement.
6. New Design Road / Corporate Drive Intersection - The Applicant shall contribute the appropriate pro-rata share to Existing Escrow Account No. 3764 for the Eastbound and Westbound right turn lanes on Corporate Drive. The estimated cost of the improvement is \$914,609. As determined by Traffic Engineering Staff, the Developer's proportionate share of this Road Improvement is 9.16%. Therefore the Developer hereby agrees to pay \$83,781 to the escrow account for this Road Improvement.
7. MD 351 / Solarex Court – The applicant shall contribute the appropriate pro-rata share to Existing Escrow Account No. 4054 for a third auxiliary through lane at Solarex Court - The

estimated cost of the improvement is \$132,328. As determined Traffic Engineering Staff, the Developer's proportionate share of this Road Improvement is 2.47%. Therefore the Developer hereby agrees to pay \$3,269 to the escrow account for this Road

8. New Design Road / English Muffin Way – The Applicant shall contribute the appropriate pro-rata share to Existing Escrow Account No. 3286 for a signal at the intersection of English Muffin Way. The estimated cost of the improvement \$350,000. As determined by Traffic Engineering Staff, the Developer's proportionate share of this Road Improvement is 0.22%. Therefore the Developer hereby agrees to pay \$785 to the escrow account for this Road Improvement.
9. MD 85 / Crestwood Blvd – The Applicant shall contribute the appropriate pro-rata share to Existing Escrow Account No. 3282 for an additional northbound through lane at the intersection of MD 85 and Crestwood Blvd. The estimated cost of the improvement is \$1,893,460. As determined by Traffic Engineering Staff, the Developer's proportionate share of this Road Improvement is 0.14%. Therefore the Developer hereby agrees to pay \$2,630 to the escrow account for this Road Improvement.

A total of \$179,629 for the escrow payments described above must be paid to the County by the Developer, its successors or assigns, prior to plat recordation. Should this payment not be made within one year of the execution of this Letter, the County reserves the right to adjust this amount, based on an engineering cost index.

Period of Validity: The APFO approval is valid for two (2) years from the date of Commission approval; therefore, the APFO approval expires on September 8, 2023.

Disclaimer: This Letter pertains to APFO approval only, and shall not be construed to provide any express or implied rights to continue the development process. The Project remains subject to all applicable rules and regulations, including but not limited to those related to zoning, water and sewer, and subdivision. The Planning Commission's jurisdiction and authority is limited by State and County law, and approvals may be required from other local or state governmental agencies before the proposed development can proceed.

[Signatures Next Page]
DEVELOPER: Osprey Property Company II LLC

By: 
Developer *Brian P. Lopez, President*

Date: *7/15/2021*

FREDERICK COUNTY PLANNING COMMISSION:

By: _____ Date: _____
Chair or Secretary

ATTEST:

By: _____ Date: _____
Gary Hessong, Deputy Director

Planner's Initials / Date _____
(Approved for technical content)

County Attorney's Office Initials / Date _____
(Approved as to legal form)

See Exhibit #3 Attached